

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,)	Civil Action No. 04-253E
)	
Plaintiff,)	Hon. Sean J. McLaughlin
)	United States District
v.)	Judge
)	
TIM HOLOHAN, <u>et al.</u> ,)	Hon. Susan Paradise Baxter
)	Chief United States Magistrate
Defendants.)	Judge
)	
)	ELECTRONICALLY FILED
)	

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

On June 12, 2007, without requesting leave from the Court, Plaintiff filed a "First Amended Complaint." Doc. No. 86. For the following reasons, this Court should reject Plaintiff's attempt to amend his Complaint.

First, Plaintiff has failed to follow the Federal Rules of Civil Procedure regarding the amendment of pleadings. Fed. R. Civ. P. 15(a) states:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Plaintiff's case has been pending for almost three years. Defendants have successfully obtained dismissal of two counts of the original Complaint, and a Motion to Dismiss is currently pending on the final retaliation claim. Therefore, Defendants

have already filed a responsive pleading, and in order to amend his Complaint, Plaintiff must seek leave of Court or obtain Defendants' written consent. Plaintiff has done neither.

Nonetheless, even if he properly requested leave to amend the Complaint, such a request should be denied. Plaintiff's "First Amended Complaint" appears to simply re-allege the Eighth Amendment claim that has previously been dismissed by the Court. Complaint at Count I; Doc. No. 47 (Amended R & R dismissing 8th Amend. Claim). Plaintiff's First Amended Complaint also re-alleges his retaliation claims which are already before the Court. Accordingly, because the Amended Complaint does not appear to allege anything new or different, justice does not demand that the Court accept the Amended Complaint.

Finally, pretrial statements have already been filed by both parties, and should the Court deny the pending Motion to Dismiss, the case would be ripe for trial. At this juncture, permitting Plaintiff to amend his Complaint and add additional facts and claims would delay this case even further and possibly result in discovery and/or subsequent motions to dismiss.

For these reasons, the Court should deny Plaintiff the opportunity to file the First Amended Complaint.¹

Respectfully submitted,

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Dated: July 10, 2007

¹ Should this Court accept the First Amended Complaint, Defendants request 45 days to answer or otherwise respond to the Amended Complaint.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July 2007, I electronically filed and/or served via first-class U.S. mail, a true and correct copy of **DEFENDANTS' OPPOSITION TO PLAINTIFF'S FIRST AMENDED COMPLAINT** to the following:

Mr. Juan Davila-Bajana
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s/Paul D. Kovac
PAUL D. KOVAC
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